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Brf. of Louque & McCaleb for Resp't.

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IN THE UNITED STATES SUPREME COURT

No. 806

EX-PARTE, THE CITY OF NEW ORLEANS, PRAYING FOR A WRIT OF CERTIORARI.

CHS. LOUQUE,
E. HOWARD McCALEB,
Of Counsel.

Filed.....1899.

.....

Clerk.

TO THE HONORABLE THE SUPREME COURT OF THE UNITED STATES.

EX-PARTE, THE CITY OF NEW ORLEANS, PRAYING FOR A WRIT OF CERTIORARI.

No. ....

Taking notice of the application made by the City of New Orleans for a writ of certiorari, John Fisher, Tutor, et als., complainant, and the intervenors in the equity suit against the City of New Orleans, No. 747, of the U. S. Circuit Court of Appeals, Fifth Circuit, respectfully aver:

I.

That the first complaint made by the City of New Orleans is that inasmuch as she chose in her sworn answer to an ancillary bill against her, for an account, to affirm the jurisdiction of the Circuit Court, instead of putting it at issue, she is entitled to a certiorari to review the refusal of the chancellor to allow her so to do, after replication and after the filing by her, of exceptions to the master's report.

The facts are as follows:

Mrs. M. M. Fisher, complainant's wife, filed a suit at law against the Board of School Directors of the City schools of New Orleans, in the Circuit Court of the United States for the Eastern District of Louisiana, based on a judgment recovered by her in the State Court and affirmed by the Supreme Court of Louisiana; see 44 La. A. 184, Fisher vs. Board of School Directors, et als.

The defendant filed an exception to the jurisdiction of the Court on the ground that the school warrants proceeded on were assigned to plaintiff and that the assignors were citizens of Louisiana, naming each particular person who were transferers.

The defendant further averred that said claims formed the basis of the judgment sued on. This exception was filed on the 5th of March, 1892.

Then the CITY OF NEW ORLEANS VOLUNTARILY made herself a party to said suit, and also pleaded to the jurisdiction of the Court, on the ground that the plaintiff was not the owner of the judgment sued on, and that the owners were citizens of Louisiana. Circuit Court Rec. p. 112.

These exceptions were submitted to a jury and their verdict was in favor of plaintiff.

The Court charged the jury that the choses in action sued upon were merged in the judgment forming the basis of the proceedings, and that full faith and effect must be given to the judgment.

Defendant took a bill of exception to the ruling of the Court excluding evidence to contradict the judgment of the State Court. This exception of the city of the jurisdiction of the Court was filed March 12th, 1892. The verdict was rendered March 26th, 1892, and judgment regularly entered up thereon. The defendant, the Board of Directors of the City Schools, filed their answer on the 10th of May, 1892. The verdict of the jury and judgment on the merits were in favor of plaintiff May 19th, 1892. The record showing the above facts, duly certified, is made part of this appearance. The same is also found in the printed record of the Circuit Court of Appeals at pages 55 to 60 and p. 112.

The City of New Orleans and the Board of School Directors allowed this judgment to become final.

Four years after the rendition of this judgment Mrs. Fisher filed her bill against the City of New Orleans and the School Board, in which she averred: "That the school taxes out of which said judgments have been made payable is a trust fund, levied by the City of New Orleans, for the purpose of paying the expenses of the Public Schools of New Orleans." "That the Board of School Directors to whom the City of New Orleans should account have refused to demand such an account and will continue to do so, and your oratrix would be left without a remedy." Cir. Court Rec., p. 1 et seq.

She prayed for an account of the school taxes levied and collected by the City of New Orleans, for the benefit of complainant and the creditors of the School Board.

The City of New Orleans then filed its sworn answer as fol-

lows: "1st. Defendant admits that oratrix recovered judgments against the Board of School Directors, a corporation of the State of Louisiana and citizen thereof, both in this Honorable Court and in the Civil District Court for the Parish of Orleans, as is set forth in oratrix's bill of complaint and records annexed thereto and referred to therein. 2nd. Defendant admits that all of said judgments are now final and are payable as decreed and provided for in said judgments." Cir. Court Rec. p. 11-12.

The School Board answered: "That it is true oratrix recovered judgments against respondent in this Hon. Court, as stated in her bills of complaint herein, which said judgments are final and executory as decreed therein." Cir. Court Rec., p. 18.

The Board then joined the city in her defenses to defeat the complainant.

The complainant's replication was duly filed. The city was ordered to render an account of the school taxes collected by her, and Mr. E. D. Saunders was appointed master.

The complainant and the City of New Orleans appointed two experts, who separately examined the city's account and arrived practically at the same result. The master adopted the report of the city's expert and found that the city HAD COLLECTED AND RECEIVED SCHOOL TAXES TO THE AMOUNT OF $71,938.78. C. C. Rec., p. 25.

The report was filed and the city made a single exception to the master's report, i. e., "that the interest collected by the city on delinquent taxes does not follow the taxes and does not belong to the party to whom the taxes belong." C. C. Rec., p. 36.

This exception was filed June 7th, 1897. Up to this time the proceedings were carried on according to the equity rules.

At this stage the attorneys of the city became convinced that there was no escape from the liability of the city; therefore, without regard to the fact that the city was a party to the original suit and trial before the jury whose verdict maintained the jurisdiction of the Court, and that this equity proceeding was only ancillary to the original law case against the School Board and that both defendants had admitted the validity and finality of said judgment in their answers, filed without leave of Court, an exception and also a plea to the jurisdiction. C. C. Rec. p. 40.

They sought to again put at issue a question which had been

finally and forever closed, by a judgment from which no writ of error has or can be prosecuted.

On motion of solicitor for complainant these two papers were ordered stricken from the files.

On Dec. 20th/97 solicitors for the City of New Orleans asked permission to file a plea to the jurisdiction, regular in form but the permission was refused.

The Circuit Court rendered a decree in favor of complainant and the City of New Orleans appealed.

The Circuit Court of Appeals, in passing on the eighth assignment of errors which complained of the above action of the Judge said: "These documents had no proper place in the files of the Court. At the same time it is to be noticed that the right to file pleadings, after the pleadings have been regularly made, under the rules, is a matter within the discretion of the chancellor, and not subject to review. Another serious objection to these alleged pleas is that, in so far as they attack the jurisdiction of the Court in the original suit in the Circuit Court in which Mrs. Fisher recovered a judgment against the City School Board, and which is the basis of this creditor's bill, it seems clear to us that the pleas are objectionable. Mattingly vs. Nye, 8 Wall. 370." The decision of the Circuit Court of Appeals is reported in 91 Fed. Rep., p. 584.

The question of jurisdiction, nearly five years before, had been passed upon by a jury contradictorily with the City of New Orleans herself and was res adjudicata.

The verdict of a jury on a question of fact, whether the owner of the judgment was a citizen of Louisiana, could not be re-examined in the ancillary suit filed in equity to enforce the judgment.

This judgment could not be attacked collaterally under any circumstance. 156 U. S. 527-533, Evers vs. Watson; 123 U. S. 555, Demoines vs. Homestead.

It is stated in petitioner's brief that in the ancillary suit defendant could attack the jurisdiction in the primary suit, and two decisions of the Court are cited in support of this statement; 138 U. S. 552-561; 106 U. S. 679.

These two cases affirm that when a decree has been entered by consent and afterwards one of the parties applies to the Court to enforce the decree, the Court will look into the decree and will correct it, if found erroneous. The reason given is that the de-

cree was only the execution of a contract and not the decision of a Judge ?

It is also stated that this chancery suit is not an ancillary proceeding, but the following authorities show that it is:

8 Peters 1, Dunn vs. Clark.

24 How. 460, Freeman vs. Howe.

2 Wall. 609.

110 U. S. 276.

111 U. S. 522, Pacific vs. Missouri R. R. Co.

123 U. S. 329, Dewey vs. Gas Co.

When we come to the ordinary rules of pleadings one find that an answer admits citizenship. It is too late afterwards to plead that fact.

116 U. S. 588; 134 U. S. 250; 21 How. 214; 161, U. S. 356.

No judgment rendered by a Circuit Court of the United States is an absolute nullity.

156 U. S. 527, Evers vs. Watson.

123 U. S. 555, Desmoines vs. Homestead.

But if the case were on trial at this juncture, on the question of jurisdiction and taking for true all that petitioner avers, it would appear that Miss Blackadder, born in Virginia, became a citizen of Louisiana and was married to John Fisher, an Englishman, who was called to Cuba a great part of his time. The result would be that Mrs. Fisher became an English woman and an alien. This view is supported by the learned decision rendered by Justice Brown in the case of Pequinot vs. City of Detroit. 16 Fed. Rep. 211.

Her suit was filed and judgment obtained in 1892. The subsequent declaration of Mr. Fisher in 1896 to become a naturalized citizen did not oust the Circuit Court of its jurisdiction. Besides, John Fisher still remained an alien after his declaration for the purposes of jurisdiction, for a declaration of intention is not equivalent to naturalization.

3d. Wallace, Jr., Baird vs. Byrne, case No. 757, Federal Cases.

In any view, this complaint is not well founded. This whole controversy arises by reason of the chronic unwillingness of the City of New Orleans to meet and pay her just obligations.

The petitioner seems to pin her faith on Section 5 of the Act of 1875, quoted at p. 3 of her brief.

The act says that the Circuit Court shall proceed no further,

but shall dismiss the suit at any time, it shall appear to the Court that parties have been collusively made. After judgment the suit cannot be dismissed; therefore, the statute applies to any cause arising before judgment and when the Court can still dismiss the suit.

After judgment the statute does not apply.

But the City of New Orleans can only blame herself if she has not made the issue, and this Court cannot relieve her of her voluntary acts.

II.

The next ground of complaint is that the Court of Appeals erred in allowing interest on the decree, because complainant sought to realize on her judgment before taking her cross appeal. In other words, a plea of estoppel is urged against complainant.

If this ground were true, no such estoppel has ever been maintained in the Courts of the United States.

"In no instance within our knowledge has an appeal or writ of error been dismissed on the assumption that a release of errors was implied from the fact that money or property had changed hands by force of the judgment or decree.

If the judgment is reversed it is the duty of the Court to restore the parties to their rights."

7 How. 184.

3 Wall. 688, United States vs. Dashiel.

107 U. S. 8, Embry vs. Palmer.

93 U. S. 154, O'Hara vs. McConnell.

But this ground is not true. The decree, as originally rendered on Febv. 28, '98, allowed interest from January 24th, 1881. Rec. Cir. Ct., p. 124.

On the 28th of April the chancellor refused the rehearing prayed for by the city, but ex proprio motu, ordered the final decree of February 21st, 1898 to be amended so as to allow interest on the amount recovered from February 21st, 1898, instead of January 24th, 1881. He instructed "the clerk to note this amendment on the margin of said decree." Rec. 145-146.

Complainant and intervenors applied for a writ of mandamus against the Board of Liquidation to pay or fund the decree as amended. They, as usual, refused, and the writ was subsequently granted by the Circuit Court.

Your Honors will notice that under any circumstance the

least amount the city could be called upon to pay was the amount of the decree as amended; and complainant and relator did not do anything contrary to and in opposition to their rights to claim more. However, after the writ of mandamus was granted, the city then took an appeal from the decree in the chancery suit, not to act as a supersedeas. The Board of Liquidation took a writ of error from the judgment allowing the mandamus, to act as a supersedeas. The complainant and intervenors took a cross-appeal from the order of April 28th, 1898, not from the original decree. See petition for cross-appeal.

The complainant has realized nothing from the decree and has given the city no discharge. How can complainant be estopped?

The Court of appeals in a learned opinion allowed the interest on the decree which now remains as it was originally rendered.

Strange as it may seem, the City of New Orleans, applicant herein, does not in her brief set out a single reason why she should not pay interest and why the judgment of the Circuit Court of Appeals is erroneous on this subject. She alleges neither error nor injury.

The facts show that the city collected the school tax continuously from 1871 to 1881; retained the amount collected, and used it for her own purposes.

She is allowed the use of these funds for ten years, free of interest, and it was only when the city's expert closed his report on January 24th, 1881, that the interest commenced to run under the decree.

The city was an unfaithful trustee. She spoliated the trust funds belonging to complainant and intervenors, the cestui que trustent, and under the equity jurisprudence could have been condemned to pay the highest conventional interest, with a rest every six months. But if it be true that complainant can be estopped, is not the same doctrine applicable to the City of New Orleans? She was cited to answer the cross-appeal, and she appeared and contested the matter on its merits. It is too late after judgment to complain and urge that the appeal should have been dismissed.

The city expects this Honorable Court to issue a writ of certiorari to review the judgment of the Circuit Court of Appeals on a point which was not raised before that Court and which was not decided there.

III.

The third ground of complainant is that the Court erred in allowing to complainant the interest collected by the city on delinquent taxes.

Act No. 175 of 1859, Sec. 5, provides:

"That all city tax bills shall bear ten per cent interest from the first Monday of July of the year in which they are payable:"

Under this law the city collected on the school tax, interest, penalties or whatever it can be called, $48,758.75.

The question was decided by the master in a few words: "It is a question of law whether the school board is entitled to any part of the interest. I think it is—the interest, as a mere accessory of the principal, belongs, in my opinion, to the same person to whom the principal belongs." Commenting on the above the Circuit Court of Appeals decides: "Under the law, the school taxes carried 10% interest per annum, the day they became delinquent. It was a penalty for non-payment of the taxes. The interest, or penalty, for delayed payment of school taxes, formed no part of the city's proper revenues. The city in collecting the same was acting as a trustee for the school board. Delay in payment of taxes, operated to the prejudice, not of the city, but of the school fund and its creditors. We are unable to find any authority in law or morals, for the city to appropriate to herself this interest. To allow such an appropriation would be to reward the city for its own negligence in the collection of the taxes of the school fund. We fully agree with the master that "the interest, as a mere accessory of the principal, belongs to the same person to whom the principal belongs."

91 Fed. Rep. 583 N. O. vs. Fisher.

If your honors will read the decision rendered by the Circuit Court of Appeals as reported you will be convinced that all the care, attention and learning which can be bestowed on a case has been given by the conscientious and able judges on the bench of the Fifth Circuit. They have done full justice to the City of New Orleans.

This, the single exception and issue, properly raised under the pleadings in this cause is entirely devoid of merit.

IV.

The Court erred in including $11,933 00/100 discount on taxes, in its decree.

This is not true. No discount is included in the decree.

Solicitors for the city re-iterate the same charges here, although they have been shown the law and the facts repeatedly.

In 1874 the Legislature authorized the City of New Orleans to allow a rebate on taxes to all persons who would pay their taxes before they became due. But the city paid over to the School Board the full amount of the taxes collected during that period without rebate.

Mr. Aiken reports to the master: "The books of the City Treasurer show that, although a discount was allowed on all taxes paid before a certain date, the school taxes were paid over to the School Board in full and the city lost the interest on those taxes, charging it to the interest account." R. 31-32.

This was done under the special act above mentioned of 1874, No. 41, p. 78, which reads:

"That hereafter, and including the taxes of 1874, taxes imposed by the City of New Orleans, shall be payable from January 1st to March 31st, and shall be exigible from and after the 31st day of March in each year.

"That the administrators of said city, may, in their discretion and under such regulations as they may make, grant a rebate or discount on taxes paid in full prior to the 20th day of March in each, including the present year; provided, no discount shall be made upon school tax."

How can the city, in the face of this law, claim a discount on the school taxes? This point was not raised in the exception to the master's report and is not properly before the Court.

When we summarize the grounds urged for the writ of certiorari applied for herein, we find that the two grounds first mentioned are based on the fact that the lower Court erred in not deciding points not raised, i. e., first, in not passing on the question of jurisdiction which the city not only failed to put at issue, but a jurisdiction which she affirmed under oath; second: in not maintaining an estoppel not raised on the question of interest claimed on the cross-appeal. To state the propositions to refute them.

The third ground is that the Court erred in ordering the city to refund what she had received for account of complainant, in the shape of penalties or interest on delinquent taxes. The ordinary rules of logic and common honesty refute this proposition.

The last ground is that the Court should have allowed rebates.

The statute of 1874 is a complete answer to this proposition, which was not urged in the exception to the master's report and is and was not properly before the Court.

We have followed the petitioner in her printed brief, and we notice that her counsel in the opening paragraph say that the above four grounds "are sufficient for the purpose of this application," but the concluding paragraph asks this Honorable Court to consider all the grounds which are not mentioned and in support of which no argument is made." * * "They are insisted upon."

This seems a clear admission that the above grounds are not sufficient to obtain the writ.

No case has ever been presented to a Court of Justice where greater violations of rights have been perpetrated. The defendant seeks to excuse her iniquities by a maze of unjust, absurd and illegal propositions, with the evident idea of bewildering the judges.

A suitor should present himself before a Court of Justice with clean hands.

In this case, the City of New Orleans has confessedly in her treasury the money collected from the tax payers, to pay the school teachers who have taught in her public schools.

She has diverted that money to other uses and for more than twenty years she has defied all the efforts of the cestui que trustent to obtain from her a settlement. How can this Honorable Court lend a willing ear to the application of this defaulting and unfaithful trustee and assist her in retaining her wrongful possession and in further oppressing the complainant and intervenors?

Your Honors will perceive from the following decisions the vast amount of litigation presented to enforce such plain rights as are claimed by complainant: Fisher vs. School Board, 44 La. A. 184, U. S. ex rel. Fisher vs. Board of Liquidation, 60 Fed. Rep. 387, Gasquet vs. School Board, 45 La. A. 342, Fisher vs. School Board, 48 La. A. 1077, U. S. ex rel. Fisher vs. Board of Liquidation, 75 Fed. Rep. 543, Fisher vs. City of New Orleans, 91 Fed. Rep. 574.

The application herein made for a writ of certiorari is oppressive and unjust and your Honors are respectfully asked to refuse the writ.

Respectfully submitted,

CHS. LOUQUE,
E. HOWARD McCALEB,
Of Counsel.

UNITED STATES OF AMERICA.

CIRCUIT COURT OF THE UNITED STATES,

EASTERN DISTRICT OF LOUISIANA,

NEW ORLEANS, LOUISIANA.

No. 12,060.

MRS. M. M. FISHER AND HUSBAND

versus

THE BOARD OF DIRECTORS OF THE CITY SCHOOLS OF NEW ORLEANS.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., MAY 2, 1899.

United States Circuit Court, Eastern District of Louisiana.

MRS. M. M. FISHER & HUSBAND
vs.
THE BOARD OF DIRECTORS OF THE CITY SCHOOLS OF New Orleans. } No. 12060.

Petition. Filed February 23, 1892.

To the hon. the circuit court of the United States for the eastern district of Louisiana:

The petition of Mrs. M. M. Fisher, born Blackadder, duly authorized and assisted by her husband, M. M. Fisher, who appears herein for said purpose and joins his said wife herein, both citizens of the Kingdom of Spain, and residing in the island of Cuba—

Respectfully represents:

That your petitioners have recovered judgment against the Board of Directors of the City Schools of New Orleans, a corporation duly created under the laws of the State of Louisiana and a citizen of said State, for the sum of eight thousand and ninety-seven $\frac{17}{100}$ dollars, with legal interest from May 22nd, 1890.

That said judgment was rendered in favor of your petitioner and against said defendant by the civil district court for the parish of Orleans, under No. 30262 of the docket of said court.

That your petitioner's claim, which formed the basis of the aforesaid judgment, was for the salary due to petitioner for work actually done as a school teacher of the public schools of the city of New Orleans, and for the salary of other teachers whose claims were transferred to your petitioner, as the whole more fully appears by the certified copies of the petition, answer, and judgment, both of the district court, and offered by the supreme court of Louisiana on appeal.

That said judgment is made payable out of the school tax levied by the city of New Orleans on the assessed property of said city for the year 1878 and previous years.

That, notwithstanding due demand, the defendants refuse to pay.

Whereupon petitioner prays that E. B. Kruttschnitt, president of the board of directors of the city schools of New Orleans, be cited hereto, and after due proceedings be condemned to pay your petitioner the sum of eight thousand and ninety-seven $\frac{17}{100}$ dollars, with 5 % interest per annum from May 22nd, 1890, payable out of the school tax levied by the city of New Orleans prior to 1879; and petitioners pray for general relief, &c.

(Signed) CHARLES LOUQUE, *Att'y.*

Exception. Filed March 5th, 1892.

United States Circuit Court, Eastern District of Louisiana.

MRS. M. M. FISHER, Authorized and Assisted by Her Husband, M. M. Fisher,
vs.
BOARD OF DIRECTORS OF THE CITY SCHOOLS OF NEW Orleans. } No. 12060.

Now into court comes defendant in the above entitled and numbered case, and for exception to the plaintiff's petition pleads:

First. That the said plaintiff is without capacity to stand in judgment in this case, for this, that whatever interest the said plaintiff may have had therein has been seized and is now in the possession of and the property of the defendant in the case of Mrs. M. M. Fisher, duly authorized by her husband, *versus* The Board of School Directors, No. 30262 of the civil district court of the parish of Orleans; and defendant hereby makes profert of the writ of *fieri facias* in said suit, No. 30262, and the return thereon of the sheriff, and pleads the same and makes the same part of this exception.

Second. That the court is without jurisdiction to hear and determine this case, for this, to wit, that the rights and credits, the school warrants herein proceeded on, are held by the plaintiffs herein under assignments, and that the assignors are all citizens of the State of Louisiana and residents of the city of New Orleans, and therefore without right to sue defendant in this court, defendant being likewise a citizen of the State of Louisiana and likewise a resident of the city of New Orleans, and that it is not competent for Mrs. M. M. Fisher, the plaintiff herein, in her said character of assignee, to sue defendant.

That Miss M. A. McClane is the owner of school certificates transferred and assigned by her to said defendant by means of fourteen different transfers, and that Miss M. A. McClane is a citizen of the State of Louisiana and a resident of the city of New Orleans.

That Miss I. Simmons is the owner of school certificates transferred and assigned by her to plaintiff by means of eleven different transfers, and that Miss I. Simmons is a citizen of the State of Louisiana and a resident of the city of New Orleans.

That Miss S. A. Finch is the owner of school certificates transferred and assigned by her to plaintiff by means of three different transfers, and that Miss A. A. Finch is a citizen of the State of Louisiana and a resident of the city of New Orleans.

That Miss Petard is the owner of school certificates transferred and assigned by her to plaintiff by means of three different transfers, and that Miss Petard is a citizen of the State of Louisiana and a resident of the city of New Orleans.

That Miss M. A. Swatson is the owner of school certificates transferred and assigned by her to plaintiff by means of ten different

transfers, and that Miss M. A. Swatson is a citizen of the State of Louisiana and a resident of the city of New Orleans.

That Misses I. E. O'Brien, Sheehan, Miller, M. A. Hart, and Ducatel are owners of school certificates transferred and assigned by them to plaintiff by means of different transfers, and that they are all citizens of the State of Louisiana and residents of the city of New Orleans.

That Miss S. B. Horton is the owner of school certificates transferred and assigned by her to plaintiff by means of seven different transfers, and that Miss S. B. Horton is a citizen of the State of Louisiana and a resident of the city of New Orleans.

That Miss C. A. Warner is the owner of school certificates transferred and assigned by her to plaintiff by means of three different transfers, and that Miss C. A. Warner is a citizen of the State of Louisiana and a resident of the city of New Orleans.

That Miss M. M. Lowe is the owner of school certificates transferred and assigned by her to plaintiff by means of fifteen different transfers, and that Miss M. M. Lowe is a citizen of the State of Louisiana and a resident of the city of New Orleans.

That said claims so transferred *from* the basis of the judgment herein sued on, and that it is so admitted by plaintiff's petition, and that it also appears by said petition that defendant is a citizen of the State of Louisiana.

Wherefore exceptor prays that said exceptions be maintained and plaintiff's suit herein dismissed with costs.

(Signed) CARLETON HUNT, *Att'y.*

United States Circuit Court, Eastern District of Louisiana.

MRS. M. M. FISHER ET AL. *vs.* CITY OF NEW ORLEANS. } No. 12060.

Now comes the City of New Orleans and for exception to the plaintiff's petition pleads—

That the plaintiff is not the owner of the judgment herein sued on and cannot sue thereon; that the said judgment is owned by citizens of Louisiana and residents of New Orleans, who have no right to maintain an action herein upon said judgment against defendant, defendant being likewise a citizen of Louisiana, and defendant says that the names of the owners of the said judgment are set forth in the exception previously filed herein, and defendant refers to the same for the names in question.

That the judgment herein proceeded upon sets forth no cause of action.

That no action will lie to enforce the judgment herein sued upon.

That no action upon a judgment will lie in this court except when the same is a foreign judgment in the sense that it has been rendered in another country or State than the State of Louisiana or where the debtor is dead and his estate is under administration

and that the action of plaintiff does not fall within either of said categories.

Whereupon exceptor prays that the said exceptions be maintained and the plaintiffs' suit dismissed with costs.

(Signed) CARLETON HUNT, *City Att'y.*

Verdict on Exceptions to Jurisdiction.

Extract from the Minutes, November Term, 1891.

NEW ORLEANS, SATURDAY, *March 26th*, 1892.

Court met pursuant to adjournment.

Present: Hon. Edward C. Billings, district judge.

MRS. M. M. FISHER & HUSBAND
vs.
BOARD OF DIRECTORS OF THE PUBLIC SCHOOLS, CITY of New Orleans. } No. 12060.

This cause, as continued from Saturday, March 19th, 1892, was this day resumed on the exception to the jurisdiction of the court, and the jurors empanneled in the cause, as well as the attorneys for the parties respectively, being all present, the trial was proceeded with.

After receiving a charge from the court the said jury did then and there, in open court, through their said foreman, Geo. B. Penrose, render and deliver the following verdict:

We, the jury, find a verdict for the plaintiffs on the question of jurisdiction and against the defendants on that issue.

GEO. B. PENROSE, *Foreman.*

N. O., March 26, 1892.

Whereupon it was ordered that the said verdict be recorded, and it is done accordingly, and the cause was continued, to be reassigned on motion.

Bill of Exceptions. Filed March 26th, 1892.

United States Circuit Court, Eastern District of Louisiana.

MRS. M. M. FISHER, Authorized, &c.,
vs.
BOARD OF SCHOOL DIRECTORS. } No. 12060.

Be it remembered that on the trial in this case of the exception to the jurisdiction of the court,

Counsel for defendant, The Board of School Directors, said board being a citizen of the State of Louisiana, offered to prove by witnesses, who were duly called and sworn, that the school certificates,

on which the judgment of the civil district court for the parish of Orleans herein proceeded upon is based, were transferred and assigned to plaintiff for the mere purpose of suing by persons who are likewise citizens of the State of Louisiana, and that said certificates are by plaintiff held in trust for said citizens of the State of Louisiana, who could not themselves in their said character have sued defendant in this court.

But on objection to the introduction of any testimony upon that issue, made and raised by counsel for plaintiff, that said certificates were merged in said judgment of the civil district court for the parish of Orleans, the court, considering that the choses in action were merged in the judgment, and that the suit was not to recover the contents of a promissory note or other chose in action but upon the judgment, and that the judgment was conclusive upon the parties as to the ownership of the certificates, upon which it was based, sustained the objection and excluded the testimony.

Wherefore counsel for defendant then and there took this bill of exceptions to the ruling of the court excluding said testimony to prove the assignment and transfer unto plaintiff of said school certificates in trust and in order to sue, and now tenders said bill, which is duly signed and sealed accordingly.

(Signed) EDWARD C. BILLINGS, *Judge.*

March 26th, 1892.

Judgment.

Extract from the Judgment Book.

Circuit Court of the United States, Fifth Circuit and Eastern District of Louisiana, November Term, 1891.

NEW ORLEANS, SATURDAY, *March 26th*, 1892.

Court met pursuant to adjournment.
Present: Hon. Edward C. Billings, district judge.

MRS. M. M. FISHER and HUSBAND
vs.
THE BOARD OF DIRECTORS OF THE PUBLIC SCHOOLS OF the City of New Orleans. } 12060.

By reason of the verdict of the jury herein and in accordance therewith, it is ordered, adjudged, and decreed that the exception to the jurisdiction of the court herein filed by the defendants be overruled.

Judgment rendered March 26, 1892.
Judgment signed March 31, 1892.

(Signed) EDWARD C. BILLINGS, *Judge.*

Answer. Filed May 10, 1892.

U. S. Circuit Court, East. Dist. of La.

MRS. M. M. FISHER, Authorized, &c., *vs.* BOARD OF SCHOOL DIRECTORS. } No. 12060.

Into this honorable court comes The Board of Directors of the City Schools of New Orleans, and for answer to the demand against them made in part to your honor, and without in any way waiving the exceptions herein already passed upon, denies each and every allegation in the said petition contained, and prays for strict proof thereof, and that the same be dismissed at plaintiff's cost, and for all general relief.

(Signed) E. A. O'SULLIVAN,
City Attorney.

Case Called, Jury Empaneled, Hearing, and Verdict.

Extract from the Minutes, April Term, 1892.

NEW ORLEANS, THURSDAY, *May* 19, 1892.

Court met pursuant to adjournment.
Present: Hon Edward C. Billings, district judge.

MRS. M. M. FISHER *vs.* BOARD OF DIRECTORS OF THE CITY SCHOOLS OF NEW Orleans. } No. 12060.

This cause was called for trial, Charles Louque appearing for plaintiff, E. A. O'Sullivan for the defendants; whereupon the following-named jurors were called and sworn to well and truly try the issue joined herein, to wit:

1. Geo. W. Young,
2. M. F. Wilder,
3. H. M. Nugent,
4. J. C. Aucoin,
5. H. H. Carey,
6. A. L. Lange,
7. Jos. V. Bofill,
8. G. W. Stockton,
9. Chas. A. Anderson,
10. M. Camps,
11. Jac. Vollrath,
12. Wm. Louis,

when the court appointed Geo. W. Young foreman of the said jury, and the trial was proceeded with. After hearing the pleadings, evidence, and instructions of the court and arguments of counsel, the said jury did then and there, in open court, through their said foreman, render and deliver the following verdict, viz:

We, the jury, find a verdict for plaintiff in the sum of eight thousand and ninety-seven $\frac{17}{100}$ dollars, with 5 % interest per annum

from May 22, 1890, payable out of the school tax levied by the city of New Orleans prior to 1879.

GEO. W. YOUNG, *Foreman.*

May 19, 1892.

Whereupon it was ordered that the said verdict be recorded, and it is done accordingly.

Judgment.

Extract from the Judgment Book.

Circuit Court of the United States, Fifth Circuit and Eastern District of Louisiana, April Term, 1892.

NEW ORLEANS, THURSDAY, *May* 19, 1892.

Court met pursuant to adjournment.
Present: Hon. Edward C. Billings, district judge.

MRS. M. M. FISHER and HUSBAND
vs.
THE BOARD OF DIRECTORS OF THE CITY SCHOOLS OF New Orleans. } 12060.

By reason of the verdict of the jury herein and in accordance therewith, it is ordered, adjudged, and decreed that the plaintiff-, Mrs. M. M. Fisher and her husband, M. M. Fisher, have judgment in *her* favor and against the Board of Directors of the City Schools of New Orleans for the sum of eight thousand and ninety seven $\frac{17}{100}$ dollars, with 5 % interest per annum from May 22, 1890, and costs, payable out of the school tax levied by the city of New Orleans prior to 1879.

Judgment rendered May 19, 1892.
Judgment signed May 24, 1892.

(Signed) EDWARD C. BILLINGS, *Judge.*

CLERK'S OFFICE.

I, Edward R. Hunt, clerk of the United States circuit court, eastern district of Louisiana, do hereby certify the foregoing ten and one-half (10½) pages do contain a true copy of the original petition, exceptions of the Board of School Directors, exceptions of the City of New Orleans, hearing and verdict on the exceptions, bill of exceptions of defendant, judgment upon exceptions, answer, hearing and verdict, and judgment, all of which originals are now of record and on file in the archives of this office, in the cause entitled Mrs. M. M. Fisher and Husband *versus* The Board of Directors of the City Schools of New Orleans, and numbered 12060 of the docket of said circuit court.

Witness my hand and seal of said court, at the city of New Orleans, State of Louisiana, this 24th day of April, A. D. 1899.

{ Seal U. S. Circuit Court for the 5th Circuit & Eastern District of La. }

E. R. HUNT, *Clerk*,
By H. J. CARTER, *D'y Clerk*.

[Endorsed:] No. 12060. U. S. circuit court, eastern district of Louisiana. Mrs. M. M. Fisher *et al. vs.* The Board of Directors of the City Schools of New Orleans. Copy of —.